

**REMARKS/ARGUMENTS**

Applicants' attorneys respectfully request reconsideration and withdrawal of the rejections of the instant application in view of the following remarks, which place the application into condition for allowance.

**I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 1-11 and are currently pending in this application and are rejected in the Office Action mailed on September 5, 2008.

The listing of the claims above has been provided solely as a convenience to the Examiner. No claim amendments are being submitted with this response.

The Examiner has refused to consider the references cited in the original Information Disclosure Statement (IDS) filed in this application on August 14, 2006 because copies of the foreign references were not supplied. While Applicant believes copies were not required because the International Searching Authority was the European Patent Office and copies were provided by the International Bureau, the original IDS is being re-submitted along with copies of the cited references. Applicant respectfully requests consideration of the references cited in the IDS.

**II. CLAIMS 1-11 ARE PATENTABLE OVER RASMUSSEN IN VIEW OF PEYTON OR DEVALIN UNDER § 103**

Claims 1 – 11 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,127,349 to Rasmussen ("Rasmussen") in view of U.S. Patent Nos. 125,482 to

Peyton ("Peyton") or 118,592 to Devalin ("Devalin"). The rejections are respectfully traversed for at least the following reasons.

Independent claim 1 recites, *inter alia*:

A thick slab for covering a ground surface, wherein the slab comprises...at least two sections...**separated by a deep groove...ending in a point to define a breaking line...allowing the slab to be divided along this breaking line to separate the two sections...and obtain two slabs.**  
Emphasis added.

Rasmussen discloses concrete paving stones made up of adjacent single stones in which "one or several ribs, keeps single stones of a pavement flag together." *Rasmussen*, column 1, lines 60-61. The resulting pavement flag is very resistant to breakage and, "[i]f one or several ribs break by mishap, the reinforcement still keeps the single stones together." *Id.*, column 1, line 68-column 2, line 5. Accordingly, Rasmussen discloses a paving stone in which individual stones are intended to be kept together by ribs.

Page 2 of the Office Action asserts the Rasmussen discloses a slab having sections divided by a groove. Applicant respectfully disagrees. Contrary to the Examiner's assertion, Rasmussen discloses sections connected by a rib. As noted above, Rasmussen discloses that even upon breakage of "one or several ribs...the reinforcement still keeps the single stones together." *Id.* In contrast, the claimed paving slab is separated by a groove to facilitate the separation of the sections along a defined breaking line. Accordingly, Rasmussen does not disclose a slab for covering a ground surface comprising "sections...**separated by a deep groove...ending in a point to define a breaking line**"

Assuming *arguendo* that Rasmussen discloses a groove, a position with which Applicant does not agree, the Examiner concedes that the alleged groove has a blunt area, not a point and therefore does not teach "sections...**separated by a deep groove...ending in a point to define a**

**breaking line**” as presently claimed. The Examiner asserts that it would have been obvious to one of ordinary skill in the art to combine Rasmussen with Peyton or Devalin to obtain the claimed sections separated by a groove ending in a point. Applicant submits that such a combination is inappropriate.

Peyton and Devalin are both directed to single, individual paving blocks which, when placed adjacent to one another, create a joint. Adjacent surfaces can be manufactured to produce any particular joint appearance. However, the claimed feature is **“a deep groove...ending in a point to define a breaking line”** which is not suggested in the cited references.

Neither reference contains any suggestion that adjacent paving blocks were at any time connected or that the joint formed is to define a breaking line. The Examiner has not provided any rationale as to why it would have been obvious to look to individual, separate paving blocks that form a joint when placed next to each other to find **“a deep groove...ending in a point to define a breaking line”** as claimed. As recited in M.P.E.P. § 2143.01 (IV), “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Moreover, if Rasmussen’s paving stone were modified to give it the physical characteristics of either Peyton or Devalin, the paving stones of Rasmussen would be inoperable according to the stated objectives of the reference. Modifying Rasmussen to comprise individual paving stones would render the paving stones inoperable as a “paving stone consisting of a number of single flags which are concreted together” as recited in Rasmussen. *Rasmussen*, column 1, lines 6-8. A proposed modification that renders the prior art being modified

unsatisfactory for its intended purpose does not support a prima facie case of obviousness. If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

*In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) M.P.E.P. § 2143.01(V).

The Examiner's proposed modification also challenges Rasmussen's principle of operation. The ribs disclosed in Rasmussen keep the single stones of a pavement flag together and the flag can be treated roughly during transport without breaking the ribs. The joints of Peyton and Devalin are formed only after the paving blocks are installed. Even if the blocks of Peyton or Devalin were oriented during shipping in the same position as used in paving, there is no structure to keep the individual blocks together, thereby making the transport of pavement flags impossible.

Furthermore, the ribs in Rasmussen are intended to be subjected to vibration after the flags are laid in place to break the ribs. *Rasmussen*, column 2, lines 65-66. However, neither Peyton nor Devalin comprise ribs to be broken. The joints formed in the references are abutting surfaces, not structural ribs. Therefore, Rasmussen as modified by either Peyton or Devalin could not be vibrated in place to break the ribs. As explained in M.P.E.P. § 2143.01(VI), "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

For at least the foregoing reasons, because Rasmussen fails to disclose a paving slab comprising "sections...**separated by a deep groove...ending in a point to define a breaking line**" and because Peyton or Devalin, alone or in combination, fail to correct the deficiencies, it

is believed that independent claim 1 is allowable. Further, claims 2-11, which depend from claim 1, are allowable as well.

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner

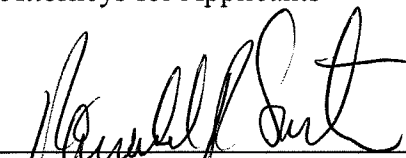
**CONCLUSION**

In view of the foregoing, it is believed that the present application is in condition for allowance. Accordingly, Applicants' attorneys respectfully request that a timely Notice of Allowance be issued in this case.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By: \_\_\_\_\_

  
Ronald R. Santucci  
Reg. No. 28,988

Telephone: (212) 588-0800  
Facsimile: (212) 588-0500